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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/664,252	09/17/2003	John Michael McClung	MCCS CIP 2A	3735
7590	03/15/2005		EXAMINER	
Guy McClung PMB 347 16690 Champion Forest Drive Spring, TX 77379-7023			ARYANPOUR, MITRA	
			ART UNIT	PAPER NUMBER
			3711	

DATE MAILED: 03/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/664,252	MCCLUNG ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Mitra Aryanpour	3711	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

#### A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 04 January 2005.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-18 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input checked="" type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                         | Paper No(s)/Mail Date. _____.   |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____.                                   |

## **DETAILED ACTION**

### ***Specification***

1. The disclosure is objected to because of the following informalities: page 1, line 12 of the Specification --is-- should be inserted after “one disc”. Appropriate correction is required for the above objection.

### ***Claim Objections***

2. Claims 12-18 are objected to because of the following informalities: in claim 12, line 14, “outré” should be changed to --outer--. Appropriate correction is required for the above objection.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carr (4,330,130) in view of James, Sr. (6,173,957).

Regarding claim 1, Carr shows an apparatus and method of playing a game. The method for engaging in an activity, the activity to be engaged in by a plurality of players (see column 7, lines 21-23), each player provided with at least one disc (flying saucer 23), the method comprising: each player throwing at least one disc at a target, (supporting base 11 and pins 13, 15, 17 and 19), scoring for each player based on a final resting location of said at least one disc (see column 8, lines 4-15), said at least one disc (23) comprising an aerodynamic flying disc and

having a disc body with an annular rim comprising a down-turned lip and having an airfoil profile that creates lift in flight (see column 3, lines 16-21; which indicates that the flying saucer used is of the same type as the Headrick patent 3,359,678, which is described as an aerodynamic flying disc with an airfoil profile). Carr does not disclose expressly the disc having indicia or a score value indicator. James, Sr. shows an apparatus and method of playing a toss game comprising a plurality of discs (projectile 14 or gliding disc 40); a plurality of players (see the abstract of the disclosure) throwing or tossing the discs (14) at a target (12; see column, lines); scoring means (see column 2, lines 49-53 also column 4, lines 57-67 and column 5, lines 1-8), wherein identifying indicia is placed on the target (12) and on the projectile in order to differentiate between the different players (14; column 5, lines 10-14). Additionally, James, Sr. teaches that the discs (14 or 40) may land in one of four positions, lettered A-C and E, and depending on the landing position of the discs, the player a different level of points is assigned. In view of James, Sr. it would have been obvious to provide identifying indicia on the projectile of Carr, and to also assign point values to the pins, the motivation being in order to differentiate between the different players and to make the game more challenging.

Regarding claim 2, Carr shows the plurality of players is divided into at least two opposed teams (see column 7, lines 21-23).

Regarding claim 3, Carr additionally shows each team alternating on offense and defense, a team on offense attempting to score and a team on defense attempting to prevent the other team from scoring (see column 7, lines 21-23; the game is played competitively).

Regarding claim 4, Carr as modified above further shows a score is achieved for a disc that hits the target (see column 1, lines 51-60; the flying saucer strikes the pin as in the game of bowling).

Regarding claim 5, Carr shows the target (14) is a container (the broadest reasonable interpretation of container would include the support base 11) and the players attempt to throw the at least one disc towards the pins which are positioned within the container.

Regarding claim 6, Carr shows the at least one disc is a plurality of discs (see column 7, lines 25-31)

Regarding claim 7, Carr teaches that additional discs are provided in order to avoid the player continuously retrieving the thrown disc (see column 7, lines 21-31). Therefore, Carr anticipates the retrieval of the thrown discs, but prefers to provide additional discs. In addition to the above teachings, Carr shows that additional tosses of the flying saucers may be permitted (see column 8, lines 4-5). Performing the additional tosses will require the players to retrieve the flying discs.

Regarding claim 8, Carr shows the target (14) is a container (the broadest reasonable interpretation of container would include the support base 11). Carr does not disclose expressly if the players stand in an equidistant position around the container. At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to stand in an equidistant position around the container/target, because Applicant has not disclosed that standing in an equidistant position around the container, provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with either the

player position taught by Carr or the claimed player position because both player positions perform the same function of allow the players to toss or throw the flying disc at the target. Therefore, it would have been an obvious matter of design choice to modify Carr to obtain the invention as specified in claim 8.

Regarding claim 9, Carr shows a plurality stakes (51) driven into the ground acting as a backstop to limit the travel of the flying saucer. The broadest reasonable interpretation of *a soccer goal* would include the plurality of stakes.

Regarding claim 10, Carr as modified in view of James, Sr. additionally shows the identifying indicia to be color (see column 5, lines 10-15).

Regarding claim 11, Carr's shows the flying disc has an annular rim with a down turned lip and having an airfoil profile that creates lift in flight (disc inherently provides for a stable gyroscopic action in flight (the flying saucer used is of the same type as the Headrick patent 3,359,678, which is described as an aerodynamic flying disc with an airfoil profile)).

5. Claims 12-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carr (4,330,130) in view of James, Sr. (6,173,957) and Rakonjac (5,776,021).

Regarding claim 12, note the rejection of claims 1 and 2. Carr does not disclose expressly that the target game can be used without a target. For example, the disc being thrown back and forth between players. Rakonjac teaches that the throwing disc game can be employed in a target game or alternatively, the disc game can be thrown back and forth from one person to another in a game of pitch and catch (see column 1, lines 59-64). In view of Rakonjac it would have been obvious to further modify the tossing game of Carr, the motivation being to further utilize the various elements of Carr to play other games such as a game of pitch and catch.

Regarding claim 13, note the rejection of claim 2.

Regarding claim 14, note the rejection of claim 3.

Regarding claim 15, note the rejection of claim 4.

Regarding claim 16, Carr as modified in view of Rakonjac shows a score is achieved by a player by catching a disc thrown at said player (see column 1, lines 53-62).

Regarding claim 17, Carr as modified above further shows the second team has at least one disc and a player of the second team throws at least one disc at a player of the first team (see column 1, lines 51-55 also column 3, lines 21-32 of the Rakonjac reference).

Regarding claim 18, note the rejection of claim 11.

***Response to Arguments***

6. Applicant's arguments filed 04 January 2005 have been fully considered but they are not persuasive. With regards to applicant's remarks that "the disc(s) have a scoring value indicator which corresponds to a number of points that can be scored with the disc(s)", it should be noted that the claim does not require the disc to have a score value indicator positioned on the disc, but merely that the disc be associated with a score value. Meaning impacting a target that has an assigned value. With regards to applicant's remarks on claim 15, applicant has merely replaced the target with a person.

***Conclusion***

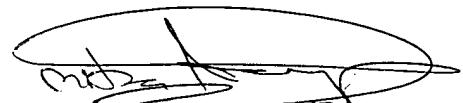
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mitra Aryanpour whose telephone number is 571-272-4405. The examiner can normally be reached on Monday - Friday 8:00 to 4:30.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Vidovich can be reached on 571-272-4415. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MA  
10 March 2005



Mitra Aryanpour  
PRIMARY EXAMINER